

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

PIERRE GAUTIER,	)	Case No. RIF-03-0001
	)	
Appellant,	)	FINDINGS OF FACT, CONCLUSIONS OF
	)	LAW AND ORDER OF THE BOARD
v.	)	
	)	
DEPARTMENT OF SOCIAL AND HEALTH	)	
SERVICES,	)	
	)	
Respondent.	)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair, and BUSSE NUTLEY, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on December 11, 2003. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Pierre Gautier was present and represented himself *pro se*. Mark Anderson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal of a reduction-in-force (RIF) action due to a lack of funds and good faith reorganization for efficiency purposes.

## II. FINDINGS OF FACT

2.1 Appellant Pierre Gautier was a Washington Management Service (WMS) employee for the Department of Social and Health Services in the Division of Developmental Disabilities. Appellant was a permanent employee; however, he was on leave without pay status at the time his position was eliminated. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 15, 2003.

2.2 Appellant began working as a WMS Reasonable Accommodation Manager within the Department of Quality Improvement on July 31, 1998. Appellant was responsible for managing reasonable accommodation for all employees with disabilities from both Fircrest School and Rainier School; however, Appellant's official duty station was located at Fircrest School.

2.3 Appellant's position was funded by both Fircrest School and Rainier School, with .6 of the FTE funded by Fircrest School, and .4 of the FTE funded by Rainier School.

2.4 In 1998, Appellant was the subject of a RIF which he appealed to the Personnel Appeals Board. The RIF action was later rescinded, and Appellant withdrew his appeal.

2.5 During fiscal year (FY) 2002, Fircrest School experienced a lack of funds. Fircrest's monthly monitoring report for November 2002 reflected the following variance (dollars overspent):

Total Overall Budget	(\$1,239,638)
Salaries	(\$725,799)
Benefits	(\$56,997)

2.6 Fircrest's monthly monitoring report for December 2002 reflected the following increase in variance:

Total Overall Budget	(\$1,358,128)
Salaries	(\$847,033)
Benefits	(\$68,855)

2.7 Further, Fircrest's annual full-time equivalents (FTEs) were reduced from 774.8 in FY 2002 to 716.3 in FY 2003. In addition, FY 2003 fund allotments were reduced as follows:

	<u>FY 2002</u>	<u>FY 2003</u>	<u>Total Decrease</u>
Salaries	\$26,276,296	\$24,653,974	\$1,622,322
Benefits	\$ 8,429,557	\$ 7,955,123	\$474,434
Total Funding	\$41,711,316	\$39,317,554	\$2,393,762

2.8 Linda Rolfe, Director of the Division of Developmental Disabilities, directed Asha Singh, Superintendent of Fircrest School, to reduce the staff by 70 FTEs. Superintendent Singh formed work groups within Fircrest School to recommend solutions for the necessary 70 FTE reductions that would not negatively impact patient care.

2.9 During the process of creating a recommendation, Fircrest's efficiency was closely examined and compared to other institutions that were accomplishing the same business functions with fewer staff. The other institutions were functioning without a Reasonable Accommodation Manager on staff. As part of the final recommendation for reorganization and FTE reduction, the elimination of Appellant's position was identified as a viable option for elimination.

2.10 Superintendent Singh presented the FTE reduction proposal to the local unions, and successfully reached an agreement with the unions regarding the FTE reductions.

1 2.11 Randi Burk, the Department of Social and Health Services' RIF Coordinator, was responsible  
2 for determining Appellant's RIF options. Appellant submitted an updated state job application to Ms.  
3 Burk, who reviewed it along with a position description of Appellant's position. Ms. Burk used  
4 Appellant's employment history to determine layoff options based on Appellant's education, work  
5 history, and experience.

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7 2.12 WMS Procedure No. 4.01, Section D, outlines the procedure for determining RIF options as  
8 follows:

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10 Beginning with the current management band, options will be offered based on  
11 seniority and will be identified and offered sequentially as follows:

12 1) A vacant WMS position within the layoff unit that is at the employee's current  
13 salary standard for which the employee has applicable personal work history and  
14 required job skills. If no option is found in the current layoff unit, the search will  
expand until all layoff units are exhausted.

15 2.13 When determining RIF options for a WMS employee, Ms. Burk performs a WMS database  
16 search within each of DSHS' eight administrations to locate available positions within the appropriate  
17 salary range. Ms. Burk was unable to locate any available WMS RIF option positions. Appellant was  
18 not eligible for options within general service since he had never held permanent status in general  
19 service. Ms. Burk concluded no formal RIF options for continued employment existed for Appellant.  
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22 2.14 By letter dated November 27, 2002, Superintendent Singh informed Appellant of the reduction  
23 in force of his WMS position as a Reasonable Accommodation Manager due to lack of funds and good  
24 faith reorganization for efficiency purposes, effective December 17, 2002.

1 2.15 After Appellant's position was eliminated, the duties of his former position were absorbed  
2 partially by Fircrest staff and partially by the Division of Access and Equal Opportunity.

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4 2.16 Respondent has adopted a reduction in force policy. DSHS Operating Procedures, WMS  
5 Procedure No. 4.01, contains the agency's reduction in force policy for WMS positions. The policy  
6 indicates that the layoff unit for WMS is the administration in which the position being RIF'd is  
7 geographically located, and where the search for WMS RIF options is conducted. The policy requires  
8 the appointing authority to advise the affected employee of the intent to eliminate his/her position,  
9 determine the employee's RIF options, and to send the affected employee written notification of any  
10 available RIF options.

### 11 12 **III. ARGUMENTS OF THE PARTIES**

13 3.1 Respondent argues that the RIF occurred as a result of a lack of funds and good faith  
14 reorganization for efficiency purposes, and for no other reasons. Respondent contends that  
15 Superintendent Singh used her discretion to review Fircrest School's operations in order to reorganize,  
16 and she determined what positions would continue to be funded and what positions she would eliminate.  
17 Respondent argues that after Superintendent Singh concluded her analysis, she elected to eliminate the  
18 Reasonable Accommodation Manager position because it was not core or critical to Fircrest School.  
19 Respondent asserts the WACs and the agency's RIF policy were followed, and Appellant had no formal  
20 RIF options available to him.

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23 3.2 Appellant argues that Respondent did not follow the WACs in implementing the RIF of his  
24 position. Appellant asserts that DSHS was not experiencing a lack of funds, nor did the agency provide  
25 appropriate bumping options. Appellant contends that his position was selected for elimination due to  
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1 prior disagreements with his employer related to his requests for reasonable accommodation, and his  
2 refusal to accept a transfer from the Employment Services Division to Fircrest School. Appellant argues  
3 that this RIF is related to his 1998 RIF from the agency. Appellant asserts that he was treated in a  
4 disparate and inequitable manner, and he should be fully reinstated.

#### 6 IV. CONCLUSIONS OF LAW

7 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
8 herein.

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10 4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-170.  
11 Respondent has the burden of proving by a preponderance of the credible evidence that it laid the  
12 employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington University, PAB  
13 No. L93-018 (1995).

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15 4.3 In Talbott and Hobson v. Dep’t of Social and Health Services, PAB Case Nos. L81-2 & L81-3  
16 (Murphy, Hrgs, Exam.)(1981), the hearings examiner found that the reorganization was effected after  
17 consideration of many factors affecting the efficiency of the overall unit, and not designed to  
18 inconvenience the two appellants whose positions were transferred as a result of the reorganization and  
19 consolidation.

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21 4.4 It is not our function to determine whether the reorganization proposal itself was right or wrong,  
22 but only to determine if the reorganization was done in good faith. George v. Dep’t of Agriculture,  
23 PAB No L94-026 (1996).

1 4.5 The first issue here is whether Respondent complied with WAC 356-56-550(1) when it laid off  
2 Appellant because of a lack of funds and good faith reorganization for efficiency purposes. WAC 356-  
3 56-550, which governs reduction in force procedures for WMS employees, provides in pertinent part:

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5 (1) Washington management service employees may be separated due to reduction in  
6 force in accordance with the statutes and the agency's reduction in force procedures .  
7 . . because of lack of funds .... or good faith reorganization for efficiency purposes. . .

8 4.6 Respondent has met its burden of proving that Fircrest School suffered a reduction in its budget  
9 and a significant reduction of FTEs. Superintendent Singh made a determination, based on agency  
10 needs and a desire to reorganize Fircrest's operations, to eliminate the position held by Appellant. In  
11 this case, Respondent has met its burden of proof that Appellant's reduction in force was the result of a  
12 lack of funds and good faith reorganization for efficiency purposes and in compliance with the  
13 requirements of WAC 356-56-550.

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15 4.7 The second issue presented is whether Respondent provided Appellant with appropriate layoff  
16 options. WAC 356-56-550, subsection (3) indicates:

17 Each agency shall develop a reduction in force procedure that is consistent with the  
18 following:

19 (i) Appointing authorities will seek within the agency a funded vacant Washington  
20 management service position for which the employee has the required job skills, and  
21 that is at the same salary standard and/or same evaluation points.  
22 . . . The appointing authority will first look within the current management band for  
23 equivalent funded position at the same salary standard and/or the same evaluation  
24 points, and if none are found, then progressively to positions with a lower salary  
25 standard . . .

26 4.8 Respondent's WMS policy is consistent with WAC 356-56-550(3). During the RIF process,  
Ms. Burk was unable to identify a viable option for Appellant. Respondent has met its burden of  
proving that the department complied with their RIF policy and WAC 356-56-550.

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2 4.9 Appellant makes numerous claims against Respondent, including the claim that his position was  
3 selected for elimination due to prior disagreements related to his requests for reasonable  
4 accommodation, his refusal to accept a transfer from the Employment Services Division to Fircrest  
5 School, and his related RIF from the agency in 1998. However, there was insufficient evidence to  
6 establish his claim that Respondent misused the RIF procedures to remove him from the agency.

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8 4.10 Respondent has met its burden of proof, and the appeal of Pierre Gautier should be denied.

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10 **V. ORDER**

11 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Pierre Gautier is denied.

12 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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14 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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Busse Nutley, Member